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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

NORMAN LOPEZ,

Defendant and Appellant.

B267103

(Los Angeles County
Super. Ct. No. PA080206)

APPEAL from a judgment of the Superior Court of Los Angeles County, Hayden A. Zacky, Judge. Affirmed.

A. William Bartz, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Susan Sullivan Pithey, Supervising Deputy Attorney General, Esther P. Kim, Deputy Attorney General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Norman Lopez (defendant) of kidnapping his ex-girlfriend Marianella T. (Marianella), and several other related assault offenses. At trial, she testified defendant picked her up to give her a ride home but then drove in the direction of his own house and punched her into unconsciousness when she told him he was going the wrong way. We are asked to decide whether the evidence is sufficient to uphold defendant's kidnapping conviction.

I. BACKGROUND

Defendant and Marianella dated for almost a year before they broke off their relationship in March 2014. According to Marianella, she broke up with defendant because she was fed up with him checking up on her all the time, as well as his expectation that she would call him multiple times a day.

The day after they broke up, defendant and Marianella exchanged text messages in the evening. Marianella was with friends and feeling sad about the break up, and she and defendant eventually spoke by phone. Marianella asked defendant to pick her up and "take [her] home."

During her testimony at trial, Marianella described what happened when defendant arrived to pick her up at about 1:00 a.m. Defendant was angry that she was out late at night with friends, and he shoved Marianella. One of her male friends pushed defendant back, and to diffuse the situation, Marianella told defendant she wanted to go home and they could talk on the way. Specifically, she "told him he had 20 minutes that he could take me home to talk about our relationship." Marianella got in defendant's car, and after he drove off, Marianella realized defendant was not driving in the direction of her home, but was

instead on the freeway going in the direction of his own house. She had not agreed to go to his house, and she told defendant “[t]hat’s not the way to my house.” When Marianella said this, defendant had a smirk on his face and started laughing at her, but he otherwise refused to talk to her. She found this strange, and when defendant continued to say nothing after she asked why he wasn’t talking to her, Marianella became terrified. She started to use her phone to text her sister, but defendant took her phone away, still without saying anything.

At this point, according to Marianella, she kept looking out the car window, hoping (in vain, as it turns out) to catch someone else’s attention. When she was about to turn toward defendant to again ask him why he was not talking to her, Marianella felt defendant hit her in the head. He continued to punch her multiple times in the face, causing her to see black spots, and ultimately, to black out entirely. When she regained consciousness, she was in pain and saw blood on the inside of the passenger-side door. She tried to take her seat belt off and told defendant to let her out of the car.¹ When defendant did not respond, Marianella “kept screaming to let me out of the car.” Defendant then said, “Oh, I’ll let you out of the car,” unlatched her seat belt, and pushed Marianella out of the car while driving on a freeway off-ramp. Marianella’s arm got tangled in the seat belt such that she was outside the car and being dragged along the pavement. Defendant was looking in her direction while she was being dragged, and she screamed at him to stop. He did not,

¹ On cross-examination, defense counsel asked Marianella, “You’re saying not until he actually struck you did you ask him to let you out of the vehicle?” She responded: “Yes.”

but Marianella was eventually able to untangle her arm from the seat belt and roll free of the car. She ran to a car that was behind defendant's car on the off-ramp and asked the driver for help. The driver confronted defendant, who had stopped and exited his own car by that point, and defendant got back in his car and drove away.

The driver of the other car, Heriberto Peralta, testified at trial. He said he stopped when he saw Marianella fall out of the car because he was worried he might run her over. She ran to him for help, and he described her as looking "like a goat when you slaughter them," in the sense that blood was spraying out of her mouth and nose when she breathed. Marianella was transported to a hospital for medical treatment, which required a four-day stay and two surgical operations. She suffered injuries to her "whole back side," her feet, her palms (which were stripped of skin), and her face (multiple facial fractures, abrasions, and lacerations).

Defendant also testified at trial, and he provided a different account of the events leading up to and during the evening in question. He denied that he was jealous or controlling during his relationship with Marianella. Instead, defendant claimed it was Marianella who was the controlling one, checking his phone to see who he was calling or texting and frequently keeping tabs on where he was at any given time.

According to defendant, when he arrived to pick Marianella up early in the morning on March 30, 2014, she did not ask to be driven to her house. Instead, defendant claimed she told him she wanted to go to his house and talk. Once Marianella was in his car, defendant testified she looked through the text messages on his cell phone as he was driving and saw indications that caused

her to suspect he had sex with another woman the night before. When defendant admitted he had been with another woman, Marianella “flip[ped] out” and began yelling.

Defendant denied he ever hit Marianella while driving on the freeway. He also denied pushing her out of the car. Rather, defendant claimed that after Marianella learned he had slept with another woman, she told him she didn’t care about her life and jumped from the car on her own accord. According to defendant, he stopped his car as quickly as he could, approximately 1-2 seconds after seeing Marianella being dragged on the road. When asked whether he stopped the car when Marianella asked him to let her out of the car, defendant said, “She never asked to get out.”

The jury returned guilty verdicts on all four charges filed against defendant: (1) kidnapping, in violation of Penal Code section 207, subdivision (a);² (2) injuring a cohabitant or girlfriend in violation of section 273.5, subdivision (a); (3) assault with a deadly weapon (a vehicle) in violation of section 245, subdivision (a)(1); and (4) assault by means of force likely to produce great bodily injury in violation of section 245, subdivision (a)(4). The jury also found true the allegation, as to all charges, that defendant personally inflicted great bodily injury upon Marianella within the meaning of section 12022.7, subdivision (e). The trial court sentenced defendant to serve ten years in prison on the kidnapping charge, plus four years and eight months for the domestic violence and assault with a deadly weapon charges. The trial court imposed but stayed sentence,

² Undesignated statutory references that follow are to the Penal Code.

pursuant to section 654, on the assault by means of force likely to produce great bodily injury conviction.

II. DISCUSSION

Defendant contends there is no “substantial evidence from which a jury could conclude beyond a reasonable doubt that [Marianella’s] free will was overcome and her liberty forcibly restrained.” In defendant’s view, Marianella consented to drive away with defendant in his car, and she did not revoke her consent until she explicitly asked to be let out of the car upon regaining consciousness, at which point he complied by pushing her out of the car. This argument is meritless. A rational jury had ample basis to conclude Marianella never consented to go to defendant’s house and defendant forcibly compelled her to accompany him when he knocked her out after she protested he was going the wrong way.

When considering a challenge to the sufficiency of the evidence to support a conviction, ““we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” [Citation.] We determine “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” [Citation.] In so doing, a reviewing court “presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” [Citation.]” (*People v. Williams* (2015) 61 Cal.4th 1244, 1281.) Unless physically impossible or inherently

improbable, the testimony of a single witness suffices to support a conviction. (*People v. Jones* (2013) 57 Cal.4th 899, 963-964; *People v. Robertson* (1989) 48 Cal.3d 18, 44; CALCRIM No. 301.)

The kidnapping statute at issue, section 207, subdivision (a), provides in relevant part that “[e]very person who forcibly, or by any other means of instilling fear, steals or takes, or holds, detains, or arrests any person in this state, and carries the person into another country, state, or county, or into another part of the same county, is guilty of kidnapping.” Under this statute, the prosecution must accordingly prove three elements: “(1) a person was unlawfully moved by the use of physical force or fear; (2) the movement was without the person’s consent; and (3) the movement of the person was for a substantial distance.” (*People v. Bell* (2009) 179 Cal.App.4th 428, 435; see also CALCRIM No. 1215.)

Defendant primarily takes issue with the sufficiency of evidence on the first two of these elements, but there is substantial evidence to support the jury’s finding that defendant moved Marianella by use of physical force and without her consent. Although Marianella entered defendant’s car voluntarily, she testified she did so on the understanding defendant would take her home.³ When defendant instead began driving toward his house, she protested and told him he was going in a direction that was not the way to her house. At that point, defendant used force (multiple blows to the head) to

³ Defendant concedes this was the understanding when he states in his opening brief, “It is clear that the evidence at trial revealed that [Marianella] voluntarily entered [defendant’s] car so that [he] could give her a ride home.”

prevent Marianella from any further efforts to resist his plan to take her to his house against her will.⁴ To be sure, defendant testified to an entirely different account of what happened, but that is of no consequence under the applicable standard of review. (*People v. Farnam* (2002) 28 Cal.4th 107, 143 [“Simply put, if the circumstances reasonably justify the jury’s findings, the judgment may not be reversed simply because the circumstances might also reasonably be reconciled with a contrary finding”].)

Indeed, the facts of this case are materially indistinguishable from *People v. Camden* (1976) 16 Cal.3d 808. In that case, the victim voluntarily accepted a ride from the defendant, and after initially proceeding in the direction the woman wished to go, the defendant changed course and turned on to a freeway entrance going in a different direction. (*Camden, supra*, at p. 811.) The victim attempted to escape the car at that point, but the defendant seized her arm and prevented her from

⁴ Insofar as defendant challenges proof of the asportation element of kidnapping, that too was satisfied by the evidence at trial. The jury had an adequate basis to conclude defendant’s movement of Marianella was “substantial in character” after he repeatedly punched her in a moving car on the freeway—especially because she was rendered unconscious which left her in a more vulnerable state and completely eliminated, for a time, her ability to escape. (*People v. Galvan* (1986) 187 Cal.App.3d 1205, 1214-1215 [“When, as here, the victim could not have extricated herself from a moving vehicle and was transported miles away from her home, asportation is sufficient to constitute kidnaping”]; see also *People v. Martinez* (1999) 20 Cal.4th 225, 237 (*Martinez*); *People v. Morgan* (2007) 42 Cal.4th 593, 607 [even under pre-*Martinez* understanding of asportation element, forcible movement of victim more than 200 feet sufficient].)

doing so. (*Ibid.*) She then was unable to escape while the vehicle was going 60 to 70 miles-per-hour on the freeway, and she asked defendant to stop the car and let her leave to no avail. (*Ibid.*) The victim was only able to escape roughly 30 to 45 minutes later, after defendant exited the freeway. (*Id.* at pp. 811-812.)

On appeal, Camden argued there was no substantial evidence to support his conviction for kidnapping because the victim voluntarily entered his car. (*Camden, supra*, 16 Cal.3d at p. 812.) Our Supreme Court rejected the argument and held that even though her initial entry into the vehicle was voluntary, there was substantial evidence the victim was “forcibly restrained within the vehicle while asportation continued”—pointing in particular to the defendant’s initial use of force in pulling the victim back into the car and his subsequent driving at a high rate of speed that prevented her from leaving the car. (*Id.* at pp. 812, 814-815.) Similarly here, Marianella initially got into defendant’s car voluntarily but there is substantial evidence she was thereafter forcibly restrained within the car while asportation continued: defendant took her cell phone and hit her until she was unconscious after she told him he was going the wrong way, and defendant continued to drive toward his house, rather than her home, even after she later regained consciousness.⁵

⁵ Even if defendant were correct in contending we should consider whether the jury could rationally find the elements of kidnapping satisfied only after Marianella specifically demanded to be let out of the car, we would still affirm the judgment, viewing the evidence in the light most favorable to the verdict. According to Marianella, she made multiple demands to be let out of the car and the jury could infer defendant pushed her out

DISPOSITION

The judgment is affirmed.

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BAKER, J.

We concur:

TURNER, P.J.

KRIEGLER, J.

of the moving vehicle only after a significant delay. That delay, while being held in a car travelling on (or exiting) the freeway, satisfies all three elements of kidnapping. (See, e.g., *People v. Galvan, supra*, 187 Cal.App.3d at pp. 1213-1215 [kidnapping conviction upheld where the victim initially entered vehicle voluntarily but transported away from her home notwithstanding her requests to be taken home].)